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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

12 LET THEM BREATHE; REOPEN
13 CALIFORNIA SCHOOLS,

14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, in his official
capacity as Governor of the State of
17 California et al.,

18 Defendants.

Case No. 37-2021-00031385-CU-WM-NC

**DECLARATION OF MONICA GANDHI,
M.D., M.P.H.**

IMAGED FILE

Department: N-27
Judge: Hon. Cynthia A. Freeland
Date: November 8, 2021
Time: 1:30 p.m.

Action filed: July 22, 2021
Trial date: None set

20
21 I, Monica Gandhi, M.D., M.P.H., declare:

22 1. I am of legal age and am competent to make this declaration. I am a professor of
23 medicine and infectious disease physician at the University of California, San Francisco. I have
24 volunteered to testify as an expert witness in support of Plaintiffs' *ex parte* application for an
25 order requiring Defendants to show cause why a preliminary injunction should not issue pending
26 trial.

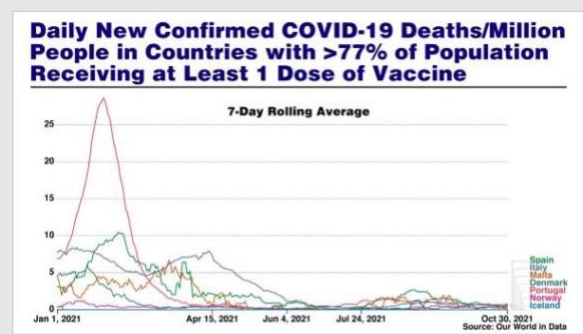
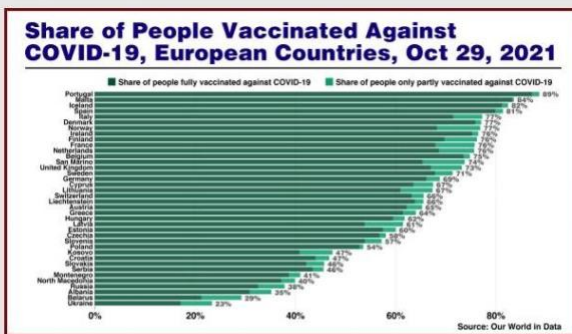
27 2. This declaration is a supplement to the Declaration of Monica Gandhi, M.D. as
28 filed on September 28, 2021 as part of the Plaintiffs' Ex Parte Application for a Temporary

1 Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not issue
2 Pending Trial. All opinions and testimony in my prior Declaration remain my opinions and this
3 addendum is meant to supplement the prior Declaration

4 3. I have personal knowledge of the facts stated herein, except where stated upon
5 information and belief, and as to those facts, I believe them to be true.

6 4. I have read the Primary and Supplemental Declarations of Dean A. Blumberg,
7 M.D., Dan M. Cooper, M.D., James Watt, M.D. and Robert Schooley, M.D. filed in support of
8 Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction.

9 5. I would first like to address the claim by Dr. Cooper that my comment of there
10 being a low chance of seeing another crippling surge in hospitalizations "is simply inaccurate."
11 Dr. Cooper cites to countries with high vaccination rates (Singapore, Israel and the UK) which
12 have since "sustained more reported COVID-19 cases than ever before." However, Dr. Cooper is
13 referring to cases, not hospitalizations, and the evidence shows the surge in cases in those
14 countries did not result in a "crippling surge" in hospitalizations,¹ which was my actual claim in
15 my declaration. In fact, although the ability of the vaccines to prevent infection wanes after
16 several months, the ability of the vaccines to prevent serious disease and death – and thus
17 hospitalization – remains incredibly high even months after full vaccination.²



24 ¹ Chloe Taylor, "4 charts show how Covid vaccines are working in the UK." CNBC,
25 October 22, 2021. <https://www.cnbc.com/2021/10/22/4-charts-show-how-covid-vaccines-are-working-in-the-uk-.html> ("the link between cases and admissions has become much more detached since earlier on in the pandemic.")

26 ² Lianna Matt McLernon, COVID-19 vaccines protect against severe illness during
27 Delta." CIDRAP, Sept. 10, 2021. <https://www.cidrap.umn.edu/news-perspective/2021/09/covid-19-vaccines-protect-against-severe-illness-during-delta> ("the researchers found that, after Delta became the predominant strain, VE for full Pfizer or Moderna vaccination was 90% against
28

1 6. Dr. Cooper’s statement that “hospitals remain at risk of being overwhelmed by
2 COVID-19 infections due to the limited treatment methods available” is also not supported by the
3 evidence relevant to California. Dr. Cooper cites to evidence that hospitals outside of California
4 are at capacity, but the states listed – Alaska, Wyoming, Ohio and Idaho – have significantly
5 lower vaccination rates than in California.

6 7. Dr. Cooper additionally expresses concern that there will be another COVID-19
7 surge this winter, as the previous variants have “added roughly 500 million new infections
8 worldwide.” As I noted above, it is possible that we will experience a surge in cases, but unlikely
9 that we will experience a “crippling surge in hospitalizations,” once again due to the high
10 vaccination rates in California.

11 8. Another related issue which I would like to address is the comment from Dr.
12 Blumberg, which was also made by Dr. Cooper, that COVID-19 has not become an “endemic
13 virus” which regularly circulates among a population since we continue to see new variants and
14 new surges in cases. Common respiratory viruses such as the many influenza strains have been
15 endemic for decades and continue to cause seasonal surges in cases, even when the majority of
16 the population is vaccinated or has prior immunity. The influenza virus also is capable of
17 continually mutating and in some cases may lead to particularly severe flu seasons, as was seen in
18 the U.S. during the 2017-2018 season, when the CDC estimated that 526 children died.³

19 9. Although Dr. Blumberg notes that California will reach an endemic state “when
20 the vast majority of the population is vaccinated,” this also must include the large number of
21 people who have natural immunity through prior infection. The California Department of Public
22 Health estimated that in June 2021, almost 86% of all Californians had immunity to COVID-19,
23 whether natural immunity or through vaccine-induced immunity.⁴ Last week during the FDA
24 _____
25 hospitalization and 91% against death.”)

26 ³ Estimated Flu-Related Illnesses, Medical Visits, Hospitalizations, and Deaths in the
27 United States — 2017–2018 Flu Season, CDC.gov. <https://www.cdc.gov/flu/about/burden/2017-2018.htm> (accessed Nov. 1, 2021).

28 ⁴ COVID-19 Seroprevalence Data, 7/9/2021.
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Sero-prevalence-COVID-19->

1 evaluation of the COVID-19 vaccine for the group of children from 5-11, the CDC stated that
2 they estimated approximately 40% of children had already had COVID-19 by June 2021,⁵ a
3 number which has also likely increased significantly due to the surge in cases over the summer.

4 10. The percentage of people in California with immunity to COVID-19 has only
5 continued to increase as more individuals got vaccinated or got infected over the summer peak in
6 COVID-19. This is why it is unlikely that California will see a significant surge in severe disease
7 and hospitalizations.

8 11. While I encourage all individuals to get vaccinated against COVID-19 regardless
9 of whether they were previously infected, I disagree with Dr. Blumberg's statement that
10 "including those who have already had COVID-19 as among those with immunity comparable to
11 a vaccine is not correct." To support his statement that "the vast majority of studies find more
12 consistent and stronger immune responses after vaccination compared to after infection," Dr.
13 Blumberg cites to a CDC study published in August regarding a higher risk of reinfection for the
14 unvaccinated who were previously infected as compared with a vaccinated population *which had*
15 *already been infected*. This is a key distinction, as it is plausible (and likely) that those who have
16 been previously infected will obtain an additional increase in immunity by getting vaccinated, but
17 it does not mean that someone who is fully vaccinated and *not* previously infected has more
18 durable immunity than someone who has only been infected. This CDC study does not support
19 his statement that those with only immunity from prior infection should not be considered to be
20 immune – particularly not from severe disease.

21 12. Dr. Cooper characterizes the studies from the Cleveland Clinic and Israel which
22 indicate that natural immunity provides durable protection against severe disease as "outlier
23 reports," but this does not change the findings from the studies indicating strong protection from
24 natural immunity. It also does not explain why the CDC would still recommend vaccination for

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26 Data.aspx

27 ⁵ Fiona Havers, MD, "Epidemiology of COVID-19 in Children Aged 5 – 11 years,
28 FDA VRBPAC Meeting, October 26, 2021, slide 7.
<https://www.fda.gov/media/153508/download> (accessed Nov. 1, 2021).

1 those with previous infection, because as noted by the Kentucky study above, getting vaccinated
2 after prior infection may offer even higher immunity than just vaccination or infection alone.

3 13. I would also like to address a significant error referenced in Defendant’s brief and
4 in the Declaration of Dr. Cooper as it relates to the comparison of COVID-19 with influenza. Dr.
5 Cooper’s Declaration states “The World Health Organization estimates that the mortality rate of
6 COVID-19 infections to be between 3% to 4%, compared to well below 0.1% for seasonal
7 influenza.” However, the source document for these statistics – a World Health Organization web
8 page dated March 17, 2020 where these numbers no longer appear – explains that the 3-4%
9 estimate is the “crude mortality rate (the number of reported deaths divided by the reported
10 cases),” and that “the infection mortality rate (the number of reported deaths divided by the
11 number of infections) will be lower.” The document then states “for seasonal influenza, mortality
12 is usually well below 0.1%.”

13 14. The 0.1% mortality for influenza represents the *infection mortality rate*, which was
14 not available for COVID-19 in March 2020, as noted on the document. Therefore, comparing the
15 initial estimated crude mortality rate of COVID-19 with the infection mortality rate of influenza
16 is simply inappropriate.

17 15. Furthermore, neither of the cited numbers reflect the mortality rate for *children*, as
18 these numbers are broad averages which incorporate the mortality of the elderly who are
19 magnitudes more likely to die from COVID-19. For example, the CDC estimates that 416
20 children aged 5-17 died from influenza during the 12 month 2017-2018 flu season, out of an
21 estimated 7.2M infections, for an infection mortality rate of 0.8/100,000, or 0.0008%.⁶ In
22 contrast, in the latest CDC Estimated COVID-19 Burden report, the infection fatality rate for
23 children from COVID-19 is 0.5/100,000, or 0.0005%.⁷

25 ⁶ Estimated Flu-Related Illnesses, Medical Visits, Hospitalizations, and Deaths in the
26 United States — 2017–2018 Flu Season; <https://www.cdc.gov/flu/about/burden/2017-2018.htm>
(accessed Nov. 1, 2021)

27 ⁷ Estimated COVID-19 Burden, updated July 27, 2021.
28 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/burden.html> (Accessed Nov. 1, 2021)

1 16. Dr. Blumberg makes a similar error in citing to a CDC page of the number of
2 *reported* deaths from influenza as being between 37 to 199 annually, when in reality the CDC
3 does not track all influenza hospitalizations and therefore estimates⁸ the number of deaths – often
4 between 300 to 600 deaths annually, with some years like the 12-month 2012-2013 season having
5 an estimated 1,161 pediatric flu deaths.⁹

6 17. Therefore, it is appropriate to compare another respiratory virus like influenza with
7 a similar mortality risk as COVID-19 in children to determine whether severe mitigation
8 measures such as masks, quarantines and asymptomatic testing are required in a school setting.

9 18. Finally, I want to address perhaps the most important issue brought up in Dr.
10 Schooley’s Supplemental Declaration – the idea of utilizing specific metrics to determine when to
11 remove protective measures such as masks. Fortunately, we agree that eventually masks should
12 be removed, and his disagreement is simply with my suggestion of using the specific metrics of
13 hospitalizations and vaccination rates.

14 19. Dr. Schooley’s position – that “as vaccines become available to younger children,
15 the mandates and recommendations will change accordingly,” is more in agreement with my
16 statements and the position of the Plaintiffs than it is with the Defendants. In contrast to Dr.
17 Schooley’s belief that mandates should change when vaccines become available, Defendants
18 already announced – on the eve of the approval of the COVID-19 vaccine for children aged 5-11
19 – that children will be forced to mask in school indefinitely even once they are vaccinated, even if
20 all students are vaccinated, and even if there are no cases of COVID-19 in the surrounding
21 community.¹⁰

22 20. Dr. Schooley’s suggestion that metrics such as individualized county-level

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24 ⁸ How CDC Estimates the Burden of Seasonal Influenza in the U.S., CDC.gov.
<https://www.cdc.gov/flu/about/burden/how-cdc-estimates.htm> (accessed Nov. 1, 2021).

25 ⁹ Past Seasons Estimated Influenza Disease Burden. CDC.gov.
26 <https://www.cdc.gov/flu/about/burden/past-seasons.html> (accessed Nov. 1, 2021).

27 ¹⁰ Reaffirming California's Approach to COVID-19 Prevention and Containment in
28 Schools by Continuing Masking Requirements, October 20, 2021. Press Release Number NR21-
307. <https://www.cdph.ca.gov/Programs/OPA/Pages/NR21-307.aspx>

1 infection rates and vaccination rates be used to determine when to remove masks is also counter
2 to the position of the Defendants, as Defendants have and plan to continue to mandate masks
3 statewide without any ability of a local community to exercise discretion based its local rates,
4 vaccination status or other circumstances.

5 21. From the perspective of needing to encourage vaccination and provide positive,
6 affirming messages about the efficacy of the COVID-19 vaccine, it is antithetical to this message
7 to indicate that even when children are vaccinated they must still adhere to all of the strictest
8 pandemic control measures as if we are still in March of 2020. While the vast majority of the
9 public is well aware of how low risk children are from COVID-19, and while the vast majority of
10 the public has been able to return to almost pre-pandemic lifestyles by dining at restaurants and
11 attending large sporting events with thousands of fans, our children are once again required to
12 shoulder the burden of the apparent irrational fear of our public health leaders.

13 22. I am deeply concerned that the current lack of any metrics to remove masks from
14 children will continue to erode public, and particularly parent, trust in public health, which could
15 have consequences for decades.

16
17 I declare the foregoing to be true and correct under penalty of perjury under the laws of
18 the State of California this 1st day of November, 2021, at San Francisco, California.

19 Monica Gandhi

20 Monica Gandhi (Nov 1, 2021 15:40 PDT)

21 Monica Gandhi, M.D., M.P.H.
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